

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,)
on behalf of itself and all others)
similarly situated,)
Plaintiff)

v.)

) C.A. No. 11-10230-MLW

STATE STREET BANK AND TRUST COMPANY,)
Defendants.)

ARNOLD HENRIQUEZ, MICHAEL T.)
COHN, WILLIAM R. TAYLOR, RICHARD A.)
SUTHERLAND, and those similarly)
situated,)
Plaintiff)

v.)

) C.A. No. 11-12049-MLW

STATE STREET BANK AND TRUST COMPANY,)
Defendants.)

THE ANDOVER COMPANIES EMPLOYEE)
SAVINGS AND PROFIT SHARING PLAN, on)
behalf of itself, and JAMES)
PEHOUSHEK-STANGELAND and all others)
similarly situated,)
Plaintiff)

v.)

) C.A. No. 12-11698-MLW

STATE STREET BANK AND TRUST COMPANY,)
Defendants.)

MEMORANDUM AND ORDER

WOLF, D.J.

July 9, 2020

The court has considered the Master's Response to the Court's June 25, 2020 Memorandum and Order (Dkt. No. 613) (the "June 25, 2020 Order") and related submissions.

The Master's Motion for Approval of the Plan for Distribution of Remainder of Settlement Fund (Dkt. No. 618, Ex. A) is being allowed. The court understands that, as it previously approved, about \$93,715,683 of the settlement fund has already been distributed to certain class members. The Master proposes that the remainder of the settlement fund, including the amounts previously awarded to Labaton Sucharow LLP ("Labaton"), The Thornton Law Firm ("Thornton"), and Lief Cabraser Heimann & Bernstein LLP ("Lief") that are to be returned pursuant to the February 27, 2020 Memorandum and Order (Dkt. No. 590) (the "February 27, 2020 Decision") be distributed in three installments. The first distribution, in the amount of about \$128,750,000, will be made to the class in about October 2020. Labaton, Thornton, and Lief will make payments to the settlement fund by January 4, 2021 and March 30, 2021. Distributions will be made to the class and to "ERISA Counsel"¹ on or before January 15, 2021, and March 30, 2021. Two of the three firms comprising ERISA Counsel request that Labaton, Thornton, and Lief be required to make their payments to the settlement fund before the end of 2020. This dispute is not material. The court finds that the Master's proposal for distribution of the remainder of the settlement funds is consistent

¹ "ERISA Counsel" are McTigue Law LLP, Zuckerman Spaeder LLP, and Keller Rohrbach LLP.

with the requirements of the June 25, 2020 Memorandum and Order (Dkt. No. 613) and is reasonable. It is, therefore, being approved.

The court has edited and revised the Master's proposed form of notice to the class (Dkt. No. 618, Ex. C). Among other things, the description of the plan of distribution in the proposed notice is inconsistent with the description in the Master's report and related submissions. See Dkt. Nos. 599, 606, 607, 618. More specifically, the proposed notice describes the distribution expected to be made in January 2021 as contingent upon, among other things, the February 27, 2020 Decision being final and, therefore, subject to being delayed by Lief's limited appeal. It is the court's intention, however, that the second distribution be made in January 2021. The court is ordering that the Notice attached hereto as Exhibit 1 be promptly issued unless it is revised by the court in response to any objection or comment filed by 3:00 p.m. on July 10, 2020.

In view of the foregoing, it is hereby ORDERED that:

1. The Special Master's Motion for Approval of the Plan for Distribution of Remainder of Settlement Fund (Dkt. No. 618, Ex. A) is ALLOWED. Therefore, the remainder of the settlement fund shall be distributed on the schedule proposed by the Master (Dkt. No. 618, Ex. A, Attachment 1), which is attached hereto as Exhibit 2.

2. Any objection or comment concerning the form of Notice to the class attached hereto as Exhibit 1 shall be filed by 3:00 p.m. on July 10, 2020.

3. Unless revised by the court, the Master shall insert the dates for objections and the hearing on any objections, and send to the class as promptly as possible the form of Notice attached hereto as Exhibit 1. The Master shall then report to the court the resulting dates for objections and the hearing on any objections.

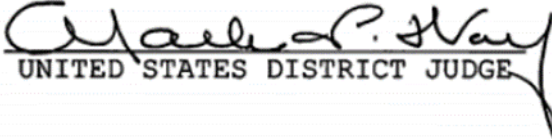

UNITED STATES DISTRICT JUDGE

Exhibit 1

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

<p><i>ARKANSAS TEACHER RETIREMENT SYSTEM, et al.</i> <i>v. STATE STREET BANK AND TRUST COMPANY</i></p>	<p>)))</p>	<p>No. 11-cv-10230 MLW</p>
<p><i>ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND TRUST COMPANY, et al.</i></p>	<p>)))</p>	<p>No. 11-cv-12049 MLW</p>
<p><i>THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, et al. v. STATE STREET BANK AND TRUST COMPANY</i></p>	<p>))))</p>	<p>No. 12-cv-11698 MLW</p>

NOTICE OF FURTHER PROCEEDINGS, INCLUDING NEW AND REDUCED ATTORNEYS’ FEE AWARD

This notice is being sent to you as a member of the class in the above-captioned cases to inform you of further proceedings, including a new, reduced attorneys’ fees award which will result in an increase in the amount of money to be distributed to class members. This notice explains the reasons for the new award, how you can access relevant documents, how you can communicate with counsel for class members, and how you can communicate with counsel for the Special Master who was appointed by Senior United States District Judge Mark L. Wolf (the “Court”) to investigate and report on issues that arose after the Court approved the settlement of this class action on November 2, 2016.

As explained below, class members now have an opportunity to object to the Court’s February 27, 2020 decision that modified the Special Master’s Report and Recommendation by, among other things, reducing the award of attorneys’ fees from about \$75,000,000 to \$60,000,000, and to participate in a [date] [14 days after the date for objections if not a weekend or holiday], 2020 hearing concerning that decision. The Court’s February 27, 2020 decision can be found at <http://www.statestreetindirectfxclasssettlement.com>. If you wish to receive a hard copy of this decision, please contact AB Data at 1-877-240-3540, and it will be sent to you at no cost.

By way of background, following a hearing on November 2, 2016, the Court approved a \$300,000,000 settlement of this class action, in which it was alleged that defendant State Street Bank and Trust overcharged its customers in connection with certain foreign exchange transactions. The Court awarded the attorneys for plaintiffs (“Plaintiffs’ Counsel”) more than \$75,000,000 in attorneys’ fees and expenses. It also made service awards from the \$300,000,000 settlement fund of \$10,000 to \$25,000 to the seven class representatives.

As previously described in an April 11, 2017 notice to the class, questions were raised concerning the double-counting by Labaton Sucharow LLP (“Labaton”), Thornton Law Firm LLP (“Thornton”), and Lieff, Cabraser, Heimann & Bernstein, LLP (“Lieff”) (collectively “Customer Counsel”) of the number of hours worked by certain attorneys on the case, which inflated the “lodestar” the Court had relied upon in awarding attorneys’ fees, as well as concerns about the hourly rates assigned to certain attorneys in the fee petitions of Customer Counsel, and whether the hours reportedly worked by certain attorneys were actually all worked. (The “lodestar” is the number of hours the attorneys worked multiplied by what Customer Counsel represented to be a reasonable hourly billing rate for each attorney.) On March 6, 2017, the Court appointed Retired United States District Judge Gerald Rosen as a Special Master to investigate and submit a Report and Recommendations addressing, at least: (a) the accuracy and reliability of the representations made by the parties in their requests for awards of attorneys’ fees and expenses, including but not limited to whether counsel employed the correct legal standards and had a proper factual basis for what was represented to be the lodestar for each firm; (b) the accuracy and reliability of the representations made in a November 10, 2016 letter from Labaton to the Court; (c) the accuracy and reliability of the representations made by the parties requesting service awards; (d) the reasonableness of the amounts of attorneys’ fees, expenses, and service awards previously ordered, and whether any or all of them should be reduced; (e) whether any misconduct occurred in connection with such awards; and, if so, (f) whether it should be sanctioned. The court also vacated the original \$75,000,000 fee award.

During the Special Master's investigation, additional questions arose concerning Labaton's undisclosed payment of approximately \$4,100,000 of the almost \$75,000,000 total attorneys' fee award to a Texas lawyer who had not worked on the case or entered a court appearance, but who had in about 2007 assisted Labaton in obtaining the Arkansas Teacher Retirement System ("ATRS"), the lead plaintiff in this case, as a client. The \$4,100,000 million payment was funded by Customer Counsel from their respective shares of the fee award from class funds.

On May 14, 2018, the Special Master submitted a 377-page Report and Recommendations, with an executive summary and exhibits, to the Court. The Special Master found that the \$75,000,000 fee award was a reasonable starting point but ultimately recommended that Customer Counsel return approximately \$10,700,000 to counsel for the other six class representatives ("ERISA Counsel") and the class. The Special Master also recommended that the Court impose monetary sanctions on one Thornton attorney and refer that attorney to the Massachusetts Board of Bar Overseers for possible disciplinary action. The Special Master also found that the \$4,100,000 payment to the Texas lawyer, and the failure to disclose that payment to the Court, ERISA counsel, or the class, violated certain ethical rules and rules of procedure.

Customer Counsel objected to many of the Special Master's findings and recommendations. On September 18, 2018, the Special Master reported to the Court that Labaton, ERISA Counsel, and he had reached a proposed agreement for the Court's consideration, which would have resolved various disputes concerning those firms.

Beginning on June 24, 2019, the Court held three additional days of hearings, including argument and testimony, to address all of the objections to the Special Master's Report and Recommendations and his proposed resolution with Labaton and ERISA Counsel. The hearings focused on: (a) whether the initial \$75,000,000 fee award was reasonable or whether another amount should be awarded; (b) whether a certain empirical study that had been cited to the Court in support of the requested \$75,000,000 fee award had been misrepresented; (c) whether Customer Counsel's reported lodestar, with the inadvertent double-counting corrected, was accurate; (d) whether the above-referenced Thornton attorney intentionally filed a false fee declaration; and (e) issues relating to Labaton's payment to the Texas lawyer.

On February 27, 2020, the Court issued a 159-page decision, which includes a comprehensive summary, that substantially modified the Special Master's Report and Recommendations. The Court awarded attorneys' fees totaling \$60,000,000, rather than the previous \$75,000,000 fee award, reducing the fee as a percentage of the settlement from 25% to 20%. The court also reallocated the fee among each of Customer Counsel and ERISA Counsel, increasing ERISA Counsel's fee award. In addition, the Court reduced the service award to ATRS from \$25,000 to \$10,000. The Court denied the request to approve the proposed resolution among the Special Master, Labaton, and ERISA Counsel. The Court also referred the matter to the Massachusetts Board of Bar Overseers. Finally, the Court ordered Labaton and Thornton to deposit \$250,000 each (in addition to the \$4,850,000 previously paid by Customer Counsel) to pay past and future reasonable fees and expenses of the Special Master and to enable the implementation of the Court's decision. The Court's February 27, 2020 decision will shift more than \$17,000,000 from Customer Counsel to the class and ERISA Counsel. Under this new allocation, the class will receive an additional \$14,384,827.16, and ERISA Counsel will receive \$2,830,787.84 to compensate ERISA Counsel, who were not involved in the deficient conduct the Court had found, for the costs they incurred in the Special Master's investigation. Lieff has appealed the February 27, 2020 decision to the extent that it reduced the fee award to Lieff. It has not appealed the reduction of the total fee award to \$60,000,000. No other law firm has appealed.

The Court has stated that it may make an additional fee award to the Hamilton Lincoln Law Institute's Center for Class Action Fairness ("CCAF"), which participated helpfully in proceedings concerning the fee award. The Court has not yet decided whether an award will be made to CCAF and, if so, whether it will be made from funds that would otherwise be distributed to the class. However, any award to CCAF will not materially reduce the additional more than \$14,000,000 the class will receive as a result of the Court's February 27, 2020 decision.

In the February 27, 2020 decision, the court found that certain statements, by Labaton and Thornton primarily, made in submissions and testimony relating to Class Counsel's request for attorneys' fees were false or misleading. Among many other things, the court found that a memorandum filed in support of the original request for 25% of the \$300,000,000 settlement fund -- \$75,000,000 -- stated that such an award would be "right in line" with the findings of a particular empirical study of fee awards, without disclosing that the study stated that "fee percentage is strongly and inversely associated with settlement size," that for settlements involving more than \$100,000,000 the "fee percentage plunged well below 20%," and that for settlements between \$250,000,000 and \$500,000,000 the mean fee award was 17.8% and the median fee award was 19.5%. The Court

also found that Labaton and Thornton in many respects violated the relevant Federal Rule of Civil Procedure and related Massachusetts Rules of Professional Conduct. The Court referred its February 27, 2020 decision to the Massachusetts Board of Bar Overseers for possible disciplinary action.

Distribution of Net Class Settlement Fund

Plaintiffs' Counsel will use their best efforts to implement a three-step distribution process for the payment of settlement funds. A tiered process will expedite the distribution to the class of funds that are not potentially in dispute, while fee awards are finalized by the Court.

An initial distribution of almost \$94,000,000 was made to certain class members in December 2017. It is anticipated that Plaintiffs' Counsel will seek Court authorization to make another distribution of all existing and remaining funds, totaling about \$128,750,000, to class members with "ERISA Recognized Claims" and "Public and Other Recognized Claims" in September 2020.¹ Before Plaintiffs' Counsel request such authorization from the Court, the Claims Administrator will notify class members of their "ERISA Recognized Claim" amounts and their "Public and Other Recognized Claim" amounts, and class members will have an opportunity to review their payment amounts before Court authorization is sought. A reserve fund of 5% will be withheld from distribution in order to satisfy any payment disputes or other contingencies that arise after the initial distribution is completed. It may take time for the Court to authorize a distribution and the distribution will commence approximately 30 days after the Court does so.

It is anticipated that by approximately January 2021, the Claims Administrator will provide a supplemental distribution to all class members of the first installment of additional funds resulting from the reduced attorneys' fee awards to Customer Counsel. Half of the additional payments to ERISA Counsel, approximately \$1,400,000, will be paid in this distribution.

It is also anticipated that by approximately April 2021, the Claims Administrator will provide to class members and ERISA Counsel a final distribution of any unclaimed funds from the prior distributions, unused portions of the reserve, Customer Counsel's last installment of the reduced attorneys' fee awards, and any adjustments to the fee award made by the Court after hearing from the class, as a result of Loeff's appeal, or as a result of any award to CCAF. If there is any further unclaimed balance thereafter, the Claims Administrator will, if feasible and economical given the costs of conducting distributions, redistribute the unclaimed balance to class members who have cashed their checks. Any funds that remain after such redistribution shall be contributed to one or more nonsectarian, not-for-profit, 501(c)(3) organizations serving the public interest approved by the Court, possibly including CCAF.

Any class members may object to the Court's February 27, 2020 decision, including the \$60,000,000 attorneys' fee awarded to Plaintiffs' Counsel. To object, you must mail a written statement to the Court, and the parties listed below, **by no later than _____, 2020** [45 days from the date of the notice]:

Clerk of the Court

United States District Court for the District of Massachusetts
John Joseph Moakley United States Courthouse
1 Courthouse Way
Boston, Massachusetts 02210

¹ Class members are referred to the original Notice of the Settlement, available at www.StateStreetIndirectFXClassSettlement.com, for a description of the Court-approved Plan of Allocation and the discussion of ERISA Recognized Claims, Public and Other Recognized Claims, and RIC Recognized Claims. Because of certain requirements relating to SSBT's settlement with the SEC, an initial distribution to class members with RIC Recognized Claims has already been conducted. Additional distributions to class members with RIC Recognized Claims will be folded into the distribution process discussed above.

Special Master	A.B. Data
<p style="text-align: center;">William Sinnott, Esq., Barrett & Singal, P.C. One Beacon Street Suite 1320 Boston, MA 02108-3106</p>	<p style="text-align: center;"><i>State Street Indirect FX Trading Class Action</i> Claims Administrator c/o A.B. Data, Ltd. P.O. Box 173000 Milwaukee, WI 53217</p>

The Court will hold a hearing, either in person, telephonically or by videoconference at the Court's discretion, to consider any objections on _____, 2020, at 2:00 p.m. [14 days after the objection deadline], before the Hon. Mark L. Wolf of the United States District Court for the District of Massachusetts, John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210. The court may adjourn the hearing or modify any of the dates in this Notice without further individual notice to class members. Any such changes shall be posted on the settlement website.

All submissions to the court or the Special Master concerning these proceedings will continue to be made part of the District Court record in these cases and will be available to class members on the settlement website, www.statestreetindirectfxclasssettlement.com, and at www.labaton.com.

Class members may contact Labaton, as Lead Counsel for the class, by calling (888) 219-6877 or emailing settlementquestions@labaton.com. Class members may contact counsel to the Special Master, William Sinnott, Esq., by calling (617) 720-5090 or emailing wsinnott@barrettsingal.com.

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS REGARDING THIS NOTICE.

Dated: _____, 2020

/s/ Mark L. Wolf
UNITED STATES DISTRICT JUDGE

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM,
on behalf of itself and all others
similarly situated,

Plaintiff,
No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

ARNOLD HENRIQUEZ, MICHAEL T. COHN,
WILLIAM R. TAYLOR, RICHARD A.
SUTHERLAND, and those similarly situated,

Plaintiffs,
No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

THE ANDOVER COMPANIES EMPLOYEE
SAVINGS AND PROFIT SHARING PLAN, on
behalf of itself, and JAMES PEHOUSHEK-
STANGELAND and all others similarly situated,

Plaintiffs,
No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

_____ /

PROPOSED PAYMENT OF FUNDS PURSUANT TO COURT’S JUNE 25, 2020 ORDER

Reallocation of funds

Date	Purpose/recipient	Total amount paid	Payment by Labaton	Payment by Lief Cabraser	Payment by Thornton	Funds paid to the Class
9/1/20	Lead Counsel to file motion for authorization to conduct First Distribution to ERISA and Public & Other Class members; deadline by which Final Distribution to Registered Investment Companies (RICs) shall be conducted	\$128.75 million				All

1/4/21	First Customer Class Counsel payment into escrow	\$8,607,807.51	\$4,793,742.18	\$569,728.50	\$3,244,336.83	
1/15/21	First Supplemental Distribution to Class and ERISA counsel					\$6,622,685.09 to Class \$1,415,393.92 to ERISA Counsel
3/30/21	Second Customer Class Counsel payment into escrow	\$8,607,807.49	\$4,793,742.17	\$569,728.50	\$3,244,336.82	
3/16/21	45 days before the second supplemental distribution to the Class/ERISA counsel is scheduled to be made, the Special Master, Lieff, and/or other Customer Counsel shall seek guidance from the court concerning Lieff escrowed funds.					

4/30/21	Second Supplemental Distribution to Class and ERISA counsel					At least \$6,622,685.07 to Class \$1,415,393.92 to ERISA Counsel
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